

EXPLANATORY MEMORANDUM TO
THE SCHOOL ORGANISATION AND GOVERNANCE (AMENDMENT)
(ENGLAND) REGULATIONS 2007

2007 No.3464

1. This explanatory memorandum has been prepared by The Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

These regulations amend parts of The School Organisation (Establishment and Discontinuance of Schools)(England) Regulations 2007 (SI 2007/1288), The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (SI 2007/1289) and The School Organisation (Transitional Provisions)(England) Regulations 2007 (SI 2007/1355). The changes proposed are principally to improve consistency across the school organisation regulations, improve general clarity and correct a number of errors/omissions.

They also make minor amendments to the School Governance (Procedure) (England) Regulations 2003 (SI 2003/1377), the School Governance (New Schools) (England) Regulations 2007 (SI 2007/1377), and the School Governance (Federations) (England) Regulations 2007 (SI 2007/960).

Further, they revoke the Education (Adjudicator Inquiry Procedure etc.) Regulations 1999 (SI 1999/1286).

A note is attached which gives further detail on the changes made by the regulations.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

Regulation 31 amends the School Governance (Procedure) (England) Regulations 2003 (SI 2003/1377). This amendment in part corrects the drafting error identified in JSCI 2002-3 25th Report.

Regulation 32 amends the School Governance (New Schools) (England) Regulations 2007 (SI 2007/958). This amendment modifies the relevant provisions of the School Governance (Constitution) (England) Regulations 2007 (SI 2007/957) and corrects drafting errors brought to the Department's attention by the JCSI 2006-7 18th report.

Regulation 33 amends the School Governance (Federations) (England) Regulations 2007 (SI 2007/960). This amendment modifies the relevant provisions of the School Governance (Constitution) (England) Regulations 2007 (SI 2007/957) and corrects the drafting errors also identified in the JCSI 2006-7 18th report.

4. **Legislative Background**

Part 2 of the Education and Inspections Act 2006 (sections 7 to 32) makes provision about the establishment, discontinuance or alteration of schools including regulation making powers.

Part 3 of the Education Act 2002 (sections 19 to 40) makes provision about the governance of maintained schools.

5. **Extent**

These regulations apply to England only.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

The policy background for the school organisation provisions is set out in the Department for Education and Skills' White Paper *Higher Standards, Better Schools for All*, published in October 2005. Policies were carried forward in the Education and Inspections Act 2006. The objectives of the policies are to give a new focus to the work of local authorities as commissioners rather than providers of educational services, and to increase the diversity and choice of provision available to parents and pupils.

The Act and regulations therefore extend competitions for new schools to primary and special schools, and provide that in most cases proposals for new community schools may only be entered into competitions with the consent of the Secretary of State.

Since the school organisation regulations came into force on 25 May a number of omissions, inconsistencies and questions have come to light raised in some cases by LAs and governing bodies. The regulations will ensure that sufficient and relevant information is made available when proposals are made so that those affected can fully understand the proposals and make their views known. They also establish clear timescales within which proposers must forward copies of proposals to relevant parties.

Some proposals for new schools may require the schools to be dis-applied from some, or all, of the requirements for the National Curriculum. The regulations will therefore enable decision makers to make their approval of

proposals for a new maintained school subject to a condition that the Secretary of State will dis-apply the requirement to follow the National Curriculum (using his existing powers under section 90 of the Education Act 2002).

No consultation has taken place on the proposed changes as the majority are technical changes to correct errors or improve consistency or respond to issues raised by stakeholders.

The amendments to the school governance regulations clarify the period in which a governing body chair or vice chair can exercise functions of the governing body in cases of urgency and make clear that it is the temporary governing body which must prepare a draft instrument of government for a new school and for a school which leaves a federation. These are technical changes to correct errors. No consultation has taken place on the proposed changes.

8. **Impact**

An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

The impact of the instrument on the public sector will fall on local authorities and those publishing proposals. The impact will be minor, since they are now familiar with the new process for making and deciding proposals and the Department provides extensive guidance together with an on-line tool to enable them to build statutory notices and both will incorporate the proposed changes when the regulations come into force.

9. **Contact**

Chris Crathorne at the Department for Children, Schools and Families Tel: 01325 391275 e-mail: chris.crathorne@dcyf.gov.uk can answer any queries regarding the instrument.

AMENDMENTS TO SCHOOL ORGANISATION AND SCHOOL GOVERNANCE REGULATIONS - Additional Explanatory Notes on Changes

Establishment and Discontinuance (E&D) Regulations

1. Remove the reference to the Audit Commission ratings of LA children and young peoples' services in the definition of "APA rating". This was originally included as a transitional provision, pending the introduction of performance ratings under section 138 of the Education and Inspections Act 2006. The new section 138 ratings come into effect from November 2007.
2. Require LAs to post the short competition "notice" at the school entrance and in a conspicuous place (i.e. as is published in the newspaper) rather than the more detailed "full" notice. This will be consistent with the publication requirement for other types of proposals
3. Clarify that the publication of any statutory notices should be in a local, rather than national, newspaper to ensure that the community and local stakeholders are aware of proposals.
4. Take account of the JCSI comments to improve the clarity of the regulations in the references to a local authority website (i.e. for publishing details of proposals made in response to a competition) and also levels of "diversity among relevant schools" (i.e. arrangements for consent to publish community school proposals).
5. Bring regulations into line with the Prescribed Alterations regulations so that copies of published proposals must be sent to the list of bodies within 1 week of publication and to anyone who requests a copy within 1 week of their request.
6. Add a new conditional approval, which enables the Decision Maker to make the approval of new school proposals, where the school do not meet all the requirements of the National Curriculum, subject to the Secretary of State agreeing to dis-apply some or all of the requirements of the National Curriculum (i.e. using existing powers under section 90 of the Education Act 2002).
7. Update the reference to current DCSF guidance to be used for determining an estimate of the capital cost of building a new school for the school competition notice.
8. Corrections to the requirements relating to the information to be provided for the new SEN improvement test, including: title to read "Special Educational Needs" and clarify that the details of the new SEN improvement test information should only be provided for new school proposals if the school will include SEN provision.
9. Remove the requirement to provide an outline of the proposed senior staffing for all new school proposals, as the outline is unlikely to be sufficiently developed at this stage.
10. Clarify that proposers, responding to a school competition, must confirm that SEN provision will be in line with the competition notice and, if not, proposers must provide information on the type of SEN and the number of pupils.

11. Clarify that the LA must provide information on the alternative provision if they propose to close a nursery school.
12. Introduce a requirement that the notice published in the newspaper, for a school competition, must include the estimated capital cost of providing the new school. Whilst this is currently included in the detailed published information (i.e. that must be provided on request) publication in the newspaper ensures that it is more prominent.
13. Correct the omission of nursery school from the list of types of new schools that can be established (i.e. in the information provided for new proposals).

Prescribed Alterations (PA) Regulations 2007

14. To add additional definitions for the purposes of other changes being made below.
15. Corrects an omission from the original regulations by providing for the transfer of land to school trustees where a foundation school acquires a foundation.
16. Improve consistency of references across the school organisation regulations - references to “parents” have been amended to read “families of pupils”.
17. Require the governing body to inform the Secretary of State of any modifications made to their published foundation proposals.
18. Correct an oversight in the regulations and make explicit provision that where a school changes category, and as a result changes admissions authority, the new admission authority must honour any decisions taken by the original admissions authority for the existing admissions round.
19. Provide for the schools adjudicator to decide revocation proposals if he decided the original proposals.
20. Make it clearer that when checking for any “creeping enlargements” (for which proposals must be published) the proposer must check for any enlargements made in the previous 5 years, or since the most recent statutory proposals if any were published in the last 5 years.
21. (Special school proposals) Require proposers to send a copy of the information published in the local newspaper to all parents of pupils, rather than the detailed full proposal information.
22. Correct the inadvertent omission of the power of appeal against a decision by the LA, on proposals made by a school governing body, by the governors and trustees of voluntary and foundation schools.
23. Add the Secretary of State to the list of people who should receive copies of decisions on proposals.
24. Correct list of conditional approvals and ensure that all potential conditional approvals are covered.

25. Amend the duty to implement proposals to reflect the original provisions in the School Standards and Framework Act 1998 to take into account the different categories of school and the varying responsibilities to provide school premises.
26. Amend the School Governance Procedure Regs 2003 to place the GB under a duty to notify the LA of a meeting where a motion to consult on proposals to change category is to be considered.

Information provided in proposals

27. Put beyond doubt that the published notice for all types of proposals must include details of how representations should be made, bringing them into line with Establishment and Discontinuance regulations.
28. (Expansion proposals) Require proposers to provide a statement as to whether they consider that the presumption to approve (i.e. contained in the Secretary of State's statutory guidance to Decision Makers) should apply and, if so, any supporting evidence.
29. (Special School proposals) Remove requirement to provide irrelevant/unavailable information when making changes (e.g. requiring capacity information for enlargements).
30. Require proposers to indicate the current published admission number (PAN) for the school, together with the proposed PAN if this is different (i.e. and where this is required – e.g. enlargements etc).
31. (For change the age range of a school so as to provide early years education) Information required on the proposed number of early years pupils to be included in the published notice
32. (For change of age range proposals to provide a sixth form) Information required on the proposed number of sixth form pupils and that this must be included in the published notice.
33. (For change to provide new SEN resourced provision) Information required on the proposed number of SEN pupils and that this must be included in the published notice.
34. (LA proposals) Remove the requirement to provide the LA proposer contact address from the proposal details as this is the same as the address for making representations.
35. (Revocation proposals) Remove the requirement to include details of where copies of the original proposals can be obtained when proposals are published. This has never been a requirement and is unnecessary as the notice will include a description of the original proposals.

Both E&D and PA Regulations

36. Proposers must send the Secretary of State a copy of the published notice in addition to the complete proposals so that Department have information confirming

when proposals were published.

37. Remove the requirement to send proposal Consultation information to the Secretary of State as this is burdensome for the proposers to provide and for the Department to store.

Transitional Arrangements (TA) regulations

38. To make explicit provision requiring any proposals published under the School Standards and Framework Act 1998, but not yet decided, to be passed to the schools adjudicator for decision. The regulations provided for such cases to be passed to the schools adjudicator at the latest by mid July but the provisions are complex and technical and have been misinterpreted. This amendment will apply to all outstanding cases and bring them to a conclusion.

39. Reg 27(4) - to correct an erroneous cross reference to Regulation 26(8).

E&D, PA and TA regulations

40. To provide a new conditional approval to enable the Decision Maker to make their approval subject to a condition being met on any other related (i.e. linked) proposals. This is needed for large reorganisation schemes.

School Governance (Procedure) Regulations

41. To require that the governing body of a school that plans to consider changing category to foundation, to notify the LA of a planned meeting at which a motion to consult on proposals to change category is to be considered and to clarify the period in which a governing body chair or vice chair can exercise functions of the governing body in cases of urgency.

School Governance (New Schools) regulations

42. To clarify the period in which a governing body chair or vice chair can exercise functions of the governing body in cases of urgency and to make explicit that it is the temporary governing body which must prepare a draft instrument of government for the new school.

School Governance (Federations) regulations

43. To make explicit that it is the temporary governing body of the school which leaves a federation which must prepare a draft instrument of government for that school.

The Adjudicator Inquiry Procedure regulations

44. To revoke the regulations which provided for schools adjudicators to hold formal local inquiries. The established practice has been for adjudicators to hold less formal, local meetings to gain a better understanding of local issues and the views of interested parties before they decide statutory proposals. Local meetings are held in almost all cases. This practice has proved successful and there is no need to retain these regulations.